

## **Minutes for CLLS Land Law Committee meeting on 15 May 2024 at 12.30pm by Teams and in person**

**Attendees:** David Hawkins (Vice Chair), Warren Gordon (Secretary), Andy Bruce, Jamie Chapman, Jayne Elkins, Simon Kenley, John Nevin, Franc Pena, Julian Pollock, Jeremy Shields and Patrick Williams.

**1 Apologies:** Jackie Newstead, (Chair), Kevin Hart (from the CLLS), Caroline DeLaney, Adrian Footer, Alison Hardy, Vikki Hills, Matt Hooton, Stephen Josephides, Paul Kenny, Brigid North and Sangita Unadkat.

### **2 Membership**

Daniel McKimm has stepped down from the Committee. The Committee wishes to thank Daniel for all his work for the Committee over the years, especially in relation to the Certificate of title and other property finance matters. Emma Willoughby from A&O has applied to join the Committee.

DLA has suggested a replacement for Jeremy Brooks, Omer Maroof and Macfarlanes has suggested a replacement for Tom Pedder, Nick Barnes.

The Committee confirmed that Emma, Omer and Nick can join the Committee.

### **3 CLLS matters**

#### *CLLS events*

For info here are a couple of CLLS events coming up over the next few months, to which members of the CLLS and City of London Solicitors' Company are invited.

Thursday 16th May - the Annual Service for members of the City of London Law Society and the City of London Solicitors' Company is being held at the Chapel Royal of St Peter ad Vincula in HM Tower of London. It is open to those of all faith and none. It is usually followed by a dinner.

Wednesday 26th June - the Annual General Meeting of the CLLS and its Summer Drinks Reception is being held at 6.00pm at The Worshipful Society Of Apothecaries, Apothecaries Hall, Black Friars Lane, London, EC4V 6EJ. This is an opportunity for all members of the committees to meet and to have a drink together hopefully in the courtyard outside in the sun! The CLSC Distinguished Service award will be presented at this evening event.

#### *CLLS and LinkedIn*

Kevin Hart has mentioned that a member of the Committee is encouraged to take up the role of monitoring the CLLS LinkedIn page (this should take an hour a week, if that); and also to encourage members of the Committee to nominate a group of associates/tech-tastic colleagues to do the work putting items on to the LinkedIn page and running it on a daily basis. The Committee can see the benefit of using LinkedIn to publicise its projects, but queries how each CLLS Committee will be involved in this and will interact with each other.

#### *Article from CLLS Chair*

Please see the following link to reflections from the CLLS Chair, Colin Passmore <https://cls.org/resource/reflectionschairmarch2024.html>. The Committee noted the importance of the well-being issues highlighted in the Chair's article and the ongoing work being done by the member firms to try and address these issues.

**4 Approval of Minutes for March 2024 Committee meeting** – The Minutes were approved. **NB** All the minutes are in the course of being migrated to the new CLLS website.

## 5 Report on title review

The first meeting to review the report was on 22 April. Members of the drafting group are David Hawkins, Adrian Footer, John Nevin, Julian Pollock, Andy Bruce and Warren Gordon.

Here are the main takeaway points from the meeting.

- The Report remains fit for purpose and fulfils a very useful function for reporting to a third party on lower value/less important properties, often being used in combination with the Certificate of title. One benefit of the Report is that it has some of the features of the Certificate, albeit in a shorter form which makes the Report a more substantial document and gives it added credibility. The length of the standard is about 20 pages and may be less depending on which options are chosen, which feels about the right length. The Committee noted the advantages of the flexible form of the Report as compared to the Certificate (the latter having a prescribed form and where disclosure needs to be made if it is changed).
- The main concern is the lack of awareness about the Report and this will be improved when we launch the new edition.
- The Committee will look to launch the new edition, the Fifth, in Autumn 2024.
- The Committee considered that the planning and searches treatment in the Report was sufficient.
- There should be a brief Company confirmation in clause 4
  - on works to the Property e.g. "no material works [with a value in excess of £[ ]] have been carried out to the Property within the six years prior to the date of this Report". There will be a footnote suggesting that a monetary amount can be included in the optional square bracketed wording if the firm giving the Report wants to be more specific as to what is covered and only disclosing if the Company confirms that the works exceed the stated value.
  - that "no part of the Property is used for residential purposes". This addresses in shorter form the new para 28 in Schedule 3 to the Certificate and also is helpful for addressing some of the concerns around application of the Building Safety Act.
  - as to the EPC rating - "it holds an energy performance certificate for the Property which:
    - the Company confirms covers the whole of the Property and is registered on the relevant statutory register;
    - is stated to be valid until [*insert date*] and expresses the energy efficiency rating for the Property as [*insert rating*]."
- The Report should include Welsh related provisions reflecting in part the Certificate's changes.
- Schedule 2 will refer to restrictions on the registered title.
- There should be a heading for data sharing in an environmental performance context for the occupational lease schedules.
- There should be no statement for outstanding obligations under agreements for lease.
- The Report will be updated to reflect aspects of the changes to the Certificate, especially in relation to the front end and limitation of liability.

The Committee decided that there would not be a wider consultation on the form of Report.

The members of the drafting group are considering the current form of Report and will feed back over the next month or so if there are any changes (beyond those mentioned above) that they consider should be made. Once feedback is received, a draft Fifth edition will be issued for further consideration.

## 6 Registration gap protocol

The next meeting of the protocol working group is on 22 May. The current draft of the protocol was provided to the Committee and there was a brief discussion. There was approval of having

alternative examples of approach, one focusing on the buyer being appointed as the seller's agent and the other requiring the seller to sign notices etc itself (for where the seller did not want to appoint the buyer as agent). A query was raised as to whether the surrender provision was required, in terms of the legal owner entering into a deed to accept the surrender, and perhaps a note to that effect should be included. The Committee also suggested that the note on revocability of the agency arrangement should be considered further.

**7 Approach to Green Lease Toolkit** PM Amends 15.05.2023 202304 GLT - consolidated draft clauses - V5 May 22-4 compared with PM Amends 15.05.2023 202304 GLT - consolidated draft clauses - V5 May 22-4-1 (betterbuildingspartnership.co.uk)

Property companies etc are considering whether to include Toolkit provisions in the light of their existing green lease drafting. Green lease provisions are very significant from a liquidity perspective for many properties, with the importance of benchmarking.

**8 Discussion with HM Land Registry will take place at the July Committee meeting.**

**9 Building Safety Act 2022 – The PSL drafting project continues and there is nothing to add at this stage.**

**10 Update on Use of disclaimers for documents on Committee's webpages: Kevin Hart – for a future meeting.**

**11 AOB –**

- **Notices under s1092A CA and "registered overseas entity":** From 4 March 2024 an entity is not a registered overseas entity if it has failed to comply with the duty to provide information to the registrar of companies in accordance with a notice under section 1092A of the Companies Act 2006 (power of registrar to require information). While this change may be caught by the conditionality drafting in sale contracts/agreements for lease (the PSLs created industry standard drafting, which requires evidence from Companies House that the seller/tenant is a registered overseas entity as at the "Completion Date"), what is not certain at the moment is what evidence can be obtained from Companies House on this point and whether that will be acceptable to the Land Registry. A particular concern is where an entry appears on the Companies House register just before completion of the relevant disposition and this is not picked up (with the effect that the disponent is not a "registered overseas entity" (as defined in the legislation) and the disposition will not necessarily satisfy the relevant overseas entity restriction on the registered title). Companies House needs to better publicise which entries in relation to s1092A will appear on its register. The Committee speculated whether a priority type search may assist here.
- **Interplay of contractual and statutory break notices under the Electronic Communications Code:** The Upper Tribunal decision in [ON Tower UK Limited v British Telecommunications PLC](#) [23 February 2024] is somewhat surprising, since usually contractual as well as Code notices are served to terminate a Code agreement. The effect of the decision is that a site provider can serve a paragraph 31 notice without actually having to serve a contractual break notice first. While this is contrary to the accepted approach to terminating protected business leases in relation to the Landlord and Tenant Act 1954, the Tribunal highlighted that care needs to be taken in making comparisons between the Code and the 1954 Act. The Tribunal was not required to address how conditions precedent or subsequent for contractual break rights would impact on a Code notice. It remains to be seen whether this decision is appealed and also whether in practice contractual notices are served less often when terminating a Code agreement. It is likely that notice(s) that satisfy both the contractual and statutory requirements will continue to be served.
- **Latest position on Construction Industry Scheme – is it still an issue for payments between landlords and tenants?** The Income Tax (Construction Industry Scheme) (Amendment) Regulations 2024 (in force from 6 April 2024) amends the CIS scheme. The new regulation 20A(e) states that a payment under a

construction contract is not a contract payment if (inter alia) the payment is for construction operations relating to works intended primarily for the benefit and use of the tenant that occupies or will occupy the property under the lease. The updated HMRC internal manual on CIS states that the condition is not met (with the effect that CIS potentially applies) for major structural changes or repairs to the fabric of the property or essential work required for any tenant to occupy the premises. Questions may remain over whether certain works in a landlord and tenant context are caught by CIS.

**12 Length of meeting: 1.5 hours**

**13 Dates for remaining 2024 meetings, at 12.30pm and hybrid in person/virtual – 17 July, 25 September and 20 November.**